

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based)	
Services to Rural Areas and Promoting)	WT Docket No. 02-381
Opportunities for Rural Telephone Companies)	
To Provide Spectrum-Based Services)	
)	
2000 Biennial Regulatory Review)	
Spectrum Aggregation Limits)	WT Docket No. 01-14
For Commercial Mobile Radio Services)	
)	
Increasing Flexibility To Promote Access to and)	
the Efficient and Intensive Use of Spectrum and)	WT Docket No. 03-202
the Widespread Deployment of Wireless)	
Services, and To Facilitate Capital Formation)	
To: The Commission		

COMMENTS OF SOUTHERN LINC

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EXECUTIVE SUMMARY

Southern LINC, a subsidiary of Southern Company and provider of commercial mobile radio service in rural and urban areas, supports the FCC's efforts to promote the rural deployment of spectrum-based services. The comments in response to the *Notice of Inquiry* in this proceeding demonstrate a high level of interest among rural and urban providers and have contributed to the development of several potentially beneficial proposals. Southern LINC therefore urges the FCC to revise its rules promptly to enhance the availability of spectrum-based services in rural areas.

The foundation for any revisions to the rules is an appropriate definition of the term "rural area." Southern LINC proposes the adoption of a new definition of "rural area," based on traditional population density criteria, that draws on the collective wisdom of Congress and the FCC.

After establishing a new definition for "rural area" to clarify the applicability of the revised rules, the FCC should address the specific proposals designed to stimulate the deployment of spectrum-based services in those areas. Southern LINC recommends that the FCC retain the existing definition of spectrum "use" as construction and operation but agrees that the lease of rural or urban spectrum to an entity that satisfies the relevant performance requirement should likewise constitute "use." While Southern LINC also supports giving licensees the option of population-based, geographic-based, or substantial service benchmarks for satisfying performance requirements, it believes that the imposition of additional performance requirements for the renewal term would unfairly disrupt the settled expectations of licensees that purchased their spectrum at auction.

Southern LINC also believes that the FCC could promote deployment of spectrum-based services in rural areas by adapting its rules for spectrum auctions. In particular, the FCC should establish the county as the minimum geographic area for all future auctions, while permitting bidders to aggregate spectrum during the auction through package bidding.

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To: The Commission

COMMENTS OF SOUTHERN LINC

Southern Communications Services, Inc. ("Southern LINC"), through its undersigned counsel, respectfully submits these Comments in the above-captioned matter pursuant to Section 1.415 of the Federal Communications Commission's ("FCC") rules. Southern LINC commends the FCC for its efforts to promote the deployment of spectrum-based services in rural areas and urges it to take the following actions. In particular, Southern LINC proposes that the FCC adopt a new definition of "rural area" for this proceeding, based on recent congressional guidance and an FCC population-density criterion. Southern LINC further advises the FCC to maintain uniform standards of defining spectrum "use" for single systems that serve both rural and urban areas. While Southern LINC recommends giving licensees the option of population-based, geographic-based, or substantial service benchmarks for satisfying performance requirements, it

opposes the imposition of any additional performance requirements for the renewal term. Finally, the FCC should establish the county as the minimum geographic area for all future auctions, while permitting bidders to aggregate spectrum during the auction through package bidding.

I. BACKGROUND

Southern LINC is a wholly-owned subsidiary of Southern Company, which is a registered holding company under the Public Utility Holding Company Act of 1935. As a Commercial Mobile Radio Service ("CMRS") provider, Southern LINC operates a digital 800 MHz SMR system using Motorola's proprietary Integrated Digital Enhanced Network technology to provide dispatch, interconnected voice, Internet access, and data transmission services over the same handset.

Southern LINC provides these services to more than 260,000 subscribers in a 127,000 square mile service territory covering Georgia, Alabama, southeastern Mississippi, and the panhandle of Florida. Southern LINC offers the most comprehensive geographic coverage of any mobile wireless service in Alabama and Georgia, serving the extensive rural territory within its footprint as well as major metropolitan areas and highway corridors. Furthermore, Southern LINC serves many areas of Florida and Mississippi that are not served by any other advanced wireless dispatch provider. The continued viability and growth of Southern LINC's system is important to all of its rural and urban subscribers.

II. THE FCC SHOULD DEFINE THE TERM "RURAL AREA" BASED ON POPULATION DENSITY

Southern LINC recommends the adoption of a new definition of "rural area" for this proceeding, based on recent congressional guidance and a traditional FCC population-

density criterion. In the *NPRM*, the FCC requested comment on the appropriate definition of the term "rural area," suggesting a wide variety of potential definitions from various federal regulatory programs.¹ The FCC asked whether it should adopt a uniform definition for all of the proposals in this proceeding, or adjust the definition based on the particular regulatory initiative.² Southern LINC proposes that the FCC define the term "rural area" to include any county within the United States and appropriate territories that (1) has less than 20,000 inhabitants per the 2000 Census results; (2) is not located within a Metropolitan Statistical Area ("MSA"); and (3) has an overall population of less than 100 inhabitants per square mile.

This proposed definition borrows in part from section 6103 of the Farm Security and Rural Investment Act of 2002, in which Congress defined "rural area" as "any incorporated or unincorporated place that has not more than 20,000 inhabitants, based on the most recent available population statistics . . . , [that] is not located in an area designated as a standard metropolitan statistical area."³ This statute is an appropriate starting point for the definition of "rural area" in this proceeding because it represents a recent congressional attempt to delineate the scope of an inherently amorphous term and governs eligibility for

¹ In re Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Notice of Proposed Rulemaking*, 18 FCC Rcd 20802 ¶ 10 (2003) [hereinafter *Rural NPRM*].

² *Id.*

³ Pub. L. No. 107-171, 116 Stat. 134 § 6103 (codified as 7 U.S.C. § 601 (2003)).

a rural broadband access program that resembles the FCC's efforts to promote rural spectrum-based services.⁴

While the FCC should rely on this statutory definition for guidance, the FCC should not wholly abandon its prior county-based definitions of "rural area." The FCC has used the county as the basis for several definitions of "rural area."⁵ In the *Rural NPRM*, the FCC also affirmed that "definitions based upon county population data would be relatively easy for the Commission to administer" because "county boundaries are widely known and rarely change . . . and a considerable amount of data at the county level exists."⁶ Of the FCC's existing county-based definitions of the term "rural area," Southern LINC recommends that the FCC incorporate into the new definition the requirement that the area have an overall population density of less than 100 inhabitants per square mile. This benchmark focuses the definition on sparsely populated regions that are more likely to be ignored by carriers.

⁴ *Id.* (stating that the purpose of the rural broadband access program is "to provide funds for the costs of the construction, improvement, and acquisition of facilities and equipment for broadband services in eligible rural communities").

⁵ In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*, 14836-38 ¶ 112-14 (2003) (defining "rural" as (1) non-nodal Economic Area ("EA") counties, (2) Rural Service Area ("RSA") counties, and (3) counties with population densities of 100 persons per square mile or less); 47 C.F.R. § 54.5 (defining "rural area" for universal service purposes as any *county* outside of an Metropolitan Statistical Area ("MSA"), with certain exceptions).

⁶ *Rural NPRM*, 18 FCC Rcd 20802 ¶ 12.

III. THE FCC SHOULD MAINTAIN UNIFORM STANDARDS FOR DEFINING SPECTRUM USE IN URBAN AND RURAL AREAS

Southern LINC agrees that the FCC "must provide a clear definition of 'use' for all parties affected by these rules."⁷ In the *Rural NPRM*, the FCC sought comment on the appropriate definition of the term "use" that would promote access to, and use of, spectrum in rural areas.⁸ For example, the FCC asked whether it should retain the existing measurement standard and whether it should count leased spectrum as in "use."⁹

As an initial matter, the FCC should retain the baseline measurement standard for measuring spectrum "use," requiring licensees to satisfy certain performance requirements for "the construction and use of specified facilities."¹⁰ Although the FCC may adopt alternative geographic-based or substantial service performance requirements for various services, it should preserve this underlying baseline standard to provide a much-needed degree of regulatory certainty during the ongoing transition to more flexible spectrum policies.

While Southern LINC recommends the retention of the existing baseline standard governing spectrum "use," it supports the modification of this standard in response to the establishment of secondary spectrum markets.¹¹ In the *Rural NPRM*, the FCC proposed to construe as "used" any "spectrum in rural areas that is leased by a licensee, and for which

⁷ *Id.* ¶ 19.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ In re Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) [hereinafter *Secondary Markets Report and Order*].

the lessee meets the performance requirements that are applicable to the licensee"¹²

Southern LINC believes that the adoption of this proposal would create the proper incentives for licensees to lease their spectrum in rural areas, advancing the efficient use of the spectrum, the availability of wireless services to rural communities, and the public interest.

To the extent that the FCC revises its rules governing the "use" of spectrum, Southern LINC emphasizes the importance of allowing licensees to choose one consistent standard for rural and urban areas. For example, the lease of spectrum should constitute "use," regardless of whether the lessee serves rural or urban areas.¹³ In addition, if the FCC were to allow more options for meeting performance standards in rural areas, licensees must have the option to choose a single standard when their systems cover territory that is both rural and urban.

This consistency is imperative for licensees serving rural and urban areas. For example, Southern LINC provides extensive coverage to rural areas in Alabama and Georgia and serves rural areas of Florida and Mississippi. But Southern LINC also serves several major metropolitan areas, including Atlanta and Birmingham. Because Southern LINC serves rural and urban areas within a single system, and holds a combination of licenses for rural, urban, and mixed rural and urban areas, the adoption of different "use" standards would complicate its internal spectrum management.

¹² *Rural NPRM*, 18 FCC Rcd 20802 ¶ 20.

¹³ *Secondary Markets Report and Order*, 18 FCC Rcd 20604 ¶ 146, 177 (stating that the FCC "will allow licensees to rely on the activities of their spectrum lessees for purposes of complying with the build-out requirements that are conditions of the license authorization," without distinguishing between spectrum licensed in rural and urban areas).

IV. THE FCC SHOULD ADOPT ALTERNATIVE METHODS OF SATISFYING THE PERFORMANCE REQUIREMENT

In response to the FCC's inquiry into the possibility of alternative performance standards,¹⁴ Southern LINC believes the FCC should revise its rules to grant all geographic area licensees the flexibility to meet either a population-based, geographic-based, or substantial service performance requirement. While this revision would provide licensees with greater flexibility to respond to the needs of their subscribers, it also has the potential to enhance regulatory parity, increase regulatory certainty for licensees, and promote the provision of service to rural areas.

Southern LINC supports giving licensees currently subject to population-based rules the option of meeting a geographic-based requirement. The alternative of a geographic-based requirement would increase flexibility for licensees by offering them another avenue for compliance and permitting them to explore different business strategies. Unlike the population-based requirement, which offers "an economic and practical incentive" to serve urban areas exclusively,¹⁵ the geographic-based requirement would give licensees serving only rural/underserved areas another way to meet the construction obligation of the licensed area as a whole.

In addition, the FCC should extend the substantial service alternative to all geographic area licensees. The substantial service alternative allows "licensees flexibility in determining which areas within their geographic license to build based on demand, market conditions, and their business plans."¹⁶ This alternative would also enhance

¹⁴ *Rural NPRM*, 18 FCC Rcd 20802 ¶ 35-42.

¹⁵ *Id.* ¶ 36.

¹⁶ *Id.* ¶ 35 n.77.

regulatory parity in accordance with the FCC's congressional mandate.¹⁷ For example, EA licensees in Channel Blocks A, B, and C of the 800 MHz SMR band do not currently have a substantial service alternative, even though the FCC adopted this alternative for licensees in Channel Blocks D through V as well as several comparable CMRS services.¹⁸ Because the substantial service alternative would not be a mandatory requirement, the FCC could apply it retrospectively to optimize flexible spectrum use and encourage rural deployment by existing licensees without disrupting a licensee's settled expectations.

Southern LINC also advises the FCC to adopt the proposed rural safe harbor for the substantial service alternative. In particular, Southern LINC supports the FCC's proposal that "a licensee will be deemed to have met the substantial service requirement if it provides coverage, through construction or lease, to at least 75 percent of the service area of at least 20 percent of the "rural" counties with its licensed area."¹⁹ However, Southern LINC recommends the adoption of its new definition of "rural area," described above, instead of the mobile wireless definition proposed in the *Rural NPRM*. The rural safe harbor proposal would provide a strong incentive for licensees to provide service to rural areas, while increasing regulatory certainty.

V. GEOGRAPHIC AREA LICENSEES SHOULD NOT HAVE ADDITIONAL PERFORMANCE REQUIREMENTS DURING THEIR RENEWAL TERMS

Southern LINC opposes the adoption of additional performance requirements for geographic area licensees during their renewal terms. While the FCC asked whether it

¹⁷ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(d)(3)(B), 107 Stat. 312 (1993); *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965 (D.C. Cir. 1999).

¹⁸ 47 C.F.R. § 90.685(a)-(b); *see e.g., id.* §§ 24.203(b) (Broadband PCS); 90.769 (220 MHz); 27.13-27.14 (Upper 700 MHz); 90.665 (900 MHz SMR); 22.503(k) (paging).

¹⁹ *Rural NPRM*, 18 FCC Rcd 20802 ¶ 41.

should impose new performance requirements on existing licensees to increase deployment to rural areas,²⁰ Southern LINC believes that the FCC should promote the provision of service to rural areas through market forces, such as secondary markets.²¹ These market forces will ensure that licensees allocate their limited capital wisely and use their spectrum efficiently.

While the FCC may offer regulatory incentives for licensees to serve rural areas, including rural safe harbors for substantial service, it should not mandate uneconomic investment. The FCC has already found that "additional performance requirements may be unnecessary because existing and emerging market incentives may be sufficient to ensure deployment in areas where such investment makes sound economic sense."²² Because the FCC concedes that "it is . . . difficult to identify whether wireless deployment is the result of minimum coverage requirements or the operation of market forces,"²³ it should not adopt new performance requirements without a better understanding of the economic forces that will enhance service in rural areas.

If the FCC were to adopt performance requirements for the renewal term, it should only apply them prospectively. Many existing CMRS licensees expended vast sums of money at auction with the reasonable expectation that they would retain their licenses after satisfying the applicable performance requirements during the initial term. The imposition

²⁰ *Id.* ¶ 45.

²¹ *Secondary Markets Report and Order*, 18 FCC Rcd 20604; Federal Communications Commission, *Spectrum Policy Task Force Report*, ET Docket No. 02-135 at 59 (2002) ("[t]o improve providers' ability to gain access to spectrum in rural areas, the Commission should promote the development of an efficient and flexible secondary markets regime"), available at <http://www.fcc.gov/sptf>. [hereinafter *SPTF Report*].

²² *Rural NPRM*, 18 FCC Rcd 20802 ¶ 45.

²³ *Id.* ¶ 45.

of additional performance requirements at this time would devalue the spectrum, negate established business plans, and require the redirection of funds to uneconomic activities.

VI. THE FCC SHOULD PERMIT LICENSEES TO DETERMINE THE SIZE OF THEIR GEOGRAPHIC AREA LICENSES

In the *Rural NPRM*, the FCC sought comment on the appropriate size of geographic area licenses.²⁴ Southern LINC recommends that the FCC establish the county as the minimum geographic area license for all future auctions, while permitting bidders to aggregate spectrum during the auction through package bidding.

The adoption of a county-sized geographic license area would promote the deployment of spectrum-based services to rural areas by expanding access to spectrum for small and rural entities. Commenters on the *Rural Notice of Inquiry*, as well as in the Spectrum Policy Task Force proceeding, generally agree that a rural CMRS provider's ability to acquire spectrum increases as the size of the geographic area license decreases.²⁵

In addition, the use of the county as the default geographic area would create a financial incentive for rural CMRS providers to acquire spectrum. The FCC has recognized that "[i]f geographic service area licenses are assigned with an initial size that does not represent the needs of service providers, then transaction costs are incurred, as carriers seek to acquire rights to spectrum they wish to serve and divest their interest in areas they do not wish to serve."²⁶ Because the prescribed geographic area will never correspond to every bidder's desires, the aggregating or partitioning of spectrum (and associated transaction costs) is inevitable following any auction. By starting with a small

²⁴ *Id.* ¶ 63.

²⁵ *E.g.*, UTStarcom Reply Comments, WT Docket No. 02-381 at 2 (Feb. 18, 2003) (supporting the county as the appropriate geographic license area); *SPTF Report* at 59.

²⁶ *Rural NPRM*, 18 FCC Rcd 20802 ¶ 63.

geographic area, however, the FCC could shift the bulk of those costs to large bidders that are more likely than rural CMRS providers to possess the resources to absorb such costs.

To reduce these transaction costs further, and to limit inefficiencies, Southern LINC recommends that the FCC structure all future auctions to permit the aggregation of geographic areas during the auction process using package bidding. Under this approach, "[b]idders will be able to submit bids on individual licenses, as in [the] simultaneous multiple round auction design, but may also submit all-or-nothing bids on packages of licenses."²⁷ The FCC should treat the resultant package of county-based licenses as a single license for purposes of the performance requirements. Thus, package bidding would provide the flexibility to accommodate small and large service areas, which will allow the FCC "to balance the needs of different providers," and produce economically and spectrally efficient results.²⁸

²⁷ Auction of Regional Narrowband PCS Licenses Scheduled for September 24, 2003, Comment Sought on Package Bidding Procedures, Reserve Prices or Minimum Opening Bids, and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 6366 (2003).

²⁸ The adoption of county-sized geographic areas would also enhance licensee flexibility and spectrum efficiency in accordance with recent FCC spectrum policies. Small geographic areas would permit licensees to adjust their geographic licenses to match the contours of their proposed service areas, while preventing any geographic area from lying fallow.

WHEREFORE, THE PREMISES CONSIDERED, Southern LINC respectfully requests that the FCC consider these Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christine Biso, hereby certify that on December 29, 2003, the foregoing "Comments" were served as indicated on each of the following:

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